

Zollner Group
Terms and Conditions of Sale and Delivery

I. General – Scope of application

1. The Zollner Group consists of the following companies: Zollner Elektronik AG

ZOLLNER Elektronik Gyártó és Szolgáltató Kft.
ZES Zollner Electronic S.R.L.
Zollner Electronics GmbH
Zollner Electronique Tunisia SARL
Zollner Electronics North Africa SARL.

Hereinafter referred to as “Zollner”.

2. These Terms and Conditions of Sale and Delivery shall apply exclusively to the legal relationships between Zollner and the Customer in connection with the deliveries and/or services of Zollner (hereinafter: Deliveries). The general terms and conditions of the Customer are therefore excluded, unless their applicability is expressly agreed in writing. The mutually agreed written (including text form) declarations shall be binding for the scope of the Deliveries.
3. Zollner reserves its unrestricted property and copyright rights of use and exploitation to cost estimates, drawings and other documents (hereinafter: Documents). The Documents may only be made accessible to third parties with Zollner’s prior consent and must be returned to Zollner immediately upon request if the order is not placed at Zollner. Sentences 1 and 2 shall apply accordingly to Documents of the Customer; however, these may be made accessible to third parties to whom Zollner has legitimately transferred Deliveries.
4. Should Zollner supply standard software and firmware to the Customer, the Customer shall, unless otherwise agreed, receive the non-exclusive right to use the software with the agreed performance features in unmodified form on the agreed devices. The Customer may make one back-up copy without express agreement.
5. Partial deliveries are permissible insofar as they are acceptable to the Customer.
6. The term ‘claims for damages’ in these Terms and Conditions of Sale and Delivery also includes claims for reimbursement of lost expenses.

II. Conclusion of contract

1. Zollner’s offers are subject to change. Zollner reserves the right to make technical changes as well as changes in shape, colour and/or weight within reasonable limits.
2. By ordering goods, the Customer makes a binding declaration that it wishes to purchase the goods ordered. Zollner is entitled to accept the offer contained in the order within two weeks of receipt. Such acceptance may be declared either in writing or by delivery of the goods to the Customer.
3. Drawings, illustrations, dimensions, weights or other performance data are only binding if this is expressly agreed in writing.

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4. The Conclusion of the contract is subject to correct and timely delivery by Zollner's suppliers. This only applies in the event that Zollner is not responsible for the non-delivery, in particular if a corresponding covering
5. transaction has been concluded with Zollner's supplier. The Customer shall be informed immediately if the service is not available.

III. Prices, Terms of payment and Offsetting

1. Unless otherwise stated in the order confirmation, prices shall apply EXW Zollner factory (Incoterms 2020) excluding packaging plus the applicable statutory value added tax on the day of invoicing. Packaging shall be invoiced separately.
2. Discounts shall be agreed separately; no discount shall be granted without a corresponding agreement.
3. Partial deliveries will be invoiced immediately and shall be due for payment individually, independently of the completion of the total delivery; prepayments for orders shall be offset proportionately against the individual partial deliveries in the absence of other agreements.
4. Transport packaging and outer packaging will not be taken back.
5. Zollner reserves the right to adjust its prices accordingly if, after the contract has been concluded, there are any increases or decreases in costs, in particular due to collective wage agreements, changes in freight, shipping or ancillary shipping costs or material prices. Zollner will provide the Customer with evidence of this upon request.
6. The Customer may only set off claims that are undisputed or have been legally established.
7. The Customer may only exercise a right of retention if its right of retention is undisputed or has been recognised by declaratory judgement and is based on the same contractual relationship.

IV. Retention of title

1. Zollner shall retain title to the goods until all claims arising from an ongoing business relationship have been settled in full.
2. The Customer is obliged to treat the goods with care. If maintenance and inspection work is required, the Customer must carry this out regularly at his own expense.
3. The Customer is obliged to notify Zollner immediately of any third-party access to the goods, for example in the event of a bailment, as well as any damage to or destruction of the goods. The Customer must notify us immediately of any change in ownership of the goods or any change in its own company headquarters.
4. Zollner is entitled to withdraw from the contract and demand the return of the goods if the Customer acts in breach of the contract, in particular in the event of default in payment or breach of an obligation under sections 2 and 3 of this provision.

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5. The Customer is entitled to resell the goods in the ordinary course of business; however, it hereby assigns to Zollner all claims in the amount of the final invoice amount (including value added tax) that may arise for it from the resale or processing against its customers or third parties, irrespective of whether the goods have been resold without or after processing. Zollner hereby accepts the assignment. The Customer remains authorized to enforce this claim even after the assignment. Zollner's authority to enforce the claim itself remains unaffected. However, Zollner agrees not to enforce the claim as long as the Customer meets his payment obligations from the collected proceeds, is not in default of payment and, in particular, no application for the opening of insolvency proceedings or the implementation of an out-of-court settlement procedure with the creditors for debt settlement (§ 305 para. 1 no. 1 InsO) has been filed, no check or bill of exchange proceedings or cessation of payments is pending. If any of the above should apply, however, Zollner shall be entitled to demand that the Customer notifies Zollner of the assigned claims and the respective debtors, provides all information necessary for collection, hands over the relevant documents and notifies the debtor (third party) of the assignment. The right to collect claims shall apply to the entire balance claim.
6. The processing or transformation of the goods by the Customer shall always be carried out on Zollner's behalf. If the goods are processed with other items not belonging to Zollner, Zollner shall acquire co-ownership of the new item in the ratio of the value of the goods to the other processed items at the time of processing until full payment has been made. In all other respects, the same shall apply to the item created by processing as to the goods delivered under reservation of title. If the goods are inseparably mixed with other items not belonging to Zollner, Zollner shall acquire co-ownership of the new item in the ratio of the value of the goods to the other mixed items at the time of mixing. If the mixing takes place in such a way that the Customer's item is to be regarded as the main item, it is agreed that the Customer shall transfer co-ownership to Zollner on a pro rata basis. The Customer shall keep the resulting sole ownership or co-ownership for Zollner free of charge.
7. With the cessation of the authorisation to collect in accordance with paragraph 5 of this clause, the Customer is also no longer authorised to install, inseparably mix or process the reserved goods.
8. With the cessation of the authorisation to collect in accordance with paragraph 5 of this clause, the Customer is also no longer authorised to install, inseparably mix or process the reserved goods.
9. If goods subject to retention of title are installed by the Customer as an integral part of the Customer's own property, the Customer hereby assigns the claims arising from the commercial sale of the property or of property rights in the amount of the value of the goods subject to retention of title with all ancillary rights and with priority over the rest. Zollner accepts the assignment.
10. Zollner undertakes to release the securities to which Zollner is entitled at the request of the Customer to the extent that the realizable value of Zollner's securities exceeds the claims to be secured by more than 20%. Unless the Customer can prove a lower realizable value of the reserved goods, the realizable value shall be the Customer's purchase prices or, if the reserved goods have been processed, the manufacturing costs of the security or co-ownership share. Zollner shall be entitled to select the securities to be released.

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V. Delivery; Delivery time

1. Compliance with deadlines for Deliveries presupposes the timely receipt of all Documents to be supplied by the Customer, necessary authorisations and releases, in particular of plans, as well as compliance with the agreed terms of payment and other obligations by the Customer. If these conditions are not fulfilled in good time, the deadlines shall be extended accordingly; this shall not apply if Zollner is responsible for the delay.
2. If non-compliance with the deadlines is due to
 - (a) force majeure, e.g. mobilization, war, acts of terrorism, riots, or similar events (e.g. strike, lockout)
 - (b) Virus and other attacks by third parties on Zollner's IT system, insofar as these occur despite compliance with the usual care in protective measures,
 - (c) obstacles due to German, US and other applicable national, EU or international regulations of foreign trade law or due to other circumstances for which Zollner is not responsible, or
 - (d) late or improper delivery to Zollner,the deadlines are extended accordingly.
3. At Zollner's request, the Customer is obliged to declare within a reasonable period of time whether it will withdraw from the contract due to the delay in delivery or insist on delivery.
4. If shipment or delivery is delayed by more than one month after notification of readiness for shipment at the request of the Customer, the Customer may be charged storage fees for each month commenced in the amount of 0.5% of the price of the delivery items, but not more than 5% in total. The contracting parties shall be at free to prove higher or lower storage costs.

VI. Transfer of risk

1. Delivery and transfer of risk shall be EXW Zollner plant (Incoterms 2020).
2. If dispatch, delivery, the start or performance of installation or assembly, acceptance at the Customer's own premises or trial operation is delayed for reasons for which the Customer is responsible or if the Customer is in default of acceptance for other reasons, the risk shall pass to the Customer.

VII. Acceptance

The customer may not refuse the acceptance of Deliveries due to insignificant defects.

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VIII. Defects

1. The products delivered by Zollner shall be deemed to be free of defects if they

- correspond to the samples approved by the Customer
- meet the specified technical documents and delivery specifications
- meet the quality requirements agreed with Zollner.

Zollner makes no other warranties, either express or implied, such as warranties of merchantability and fitness for a particular purpose.

2. All parts or services showing a defect shall, at the choice of Zollner, be remedied, replaced or redelivered free of charge, provided that the cause of the defect had already existed at the time of the transfer of risk.
3. Claims for defects become time-barred 12 months after the start of the statutory limitation period, unless the law stipulates longer limitation periods, in which case these longer limitation periods shall apply. The statutory provisions regarding suspension of expiration, suspension and restart of the limitation periods remain unaffected.
4. The Customer must notify Zollner immediately in writing of any material defects.
5. Zollner shall in the first instance be granted the opportunity to rectify the defect within a reasonable period of time.
6. If the rectification of the defect fails several times, the Customer may - without prejudice to any claims for damages pursuant to Art. X - withdraw from the contract or reduce the remuneration.
7. In particular, claims for defects shall not exist in the event of only insignificant deviation from the agreed quality, only insignificant impairment of usability, natural wear and tear or damage arising after the transfer of risk as a result of incorrect or negligent handling, excessive use, unsuitable operating materials, defective construction work, unsuitable building ground or which arise due to special external influences which are not assumed under the contract, or in the event of non-reproducible software errors. If the Customer or third parties carry out improper modifications, installation/removal or repair work, there shall also be no claim for defects for these and the resulting consequences.
8. Claims of the Customer for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labour and material costs, are excluded insofar as the expenses increase because the good have subsequently been moved to a location other than the Customer's branch office.
9. The Customer's rights of regress against Zollner as defined in § 478 BGB (regress of the contractor) shall only exist in so far as the Customer has not entered into any agreements with his customer which go beyond the statutory claims for defects. Furthermore, No. 8 shall apply accordingly to the scope of the Customer's right of regress against the supplier as defined in § 478 Para. 2 BGB.

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10. Claims for damages by the Customer due to a defect in quality shall be excluded. This shall not apply to fraudulent concealment of the defect, failure to comply with a guarantee of quality, injury to life, body or health and to intentional or grossly negligent breach of duty by Zollner. The above provisions shall not result in a change in the burden of proof to the detriment of the Customer. Further claims or claims other than those regulated in this Article VIII by the Customer against Zollner and its agents due to a material defect are excluded.
11. The Customer shall not receive any guarantees in the legal sense from Zollner.

IX. Industrial property rights and copyrights, defects of title

Zollner manufactures according to the Customer's specifications. The Customer is therefore responsible for ensuring that the products ordered and the manufacturing process required by the technical documents and delivery specifications do not infringe the intellectual property of third parties.

In the event of an infringement of the intellectual property of third parties, the Customer shall indemnify Zollner against any damages and expenses in this connection.

X. Impossibility, contract adjustment

1. If a delivery is impossible, the Customer shall be entitled to claim compensation unless Zollner is not responsible for the impossibility. However, the Customer's claim for compensation shall be limited to 10% of the value of that part of the delivery which cannot be used for the intended purpose due to the impossibility. This restriction shall not apply in cases of mandatory liability based on intent, gross negligence or injury to life, body or health; this does not imply a change in the burden of proof to the Customer's disadvantage. The Customer's right to withdraw from the contract shall remain unaffected.
2. If unforeseeable events within the meaning of Art. V No. 2 substantially change the economic significance or the content of the delivery or have a substantial effect on Zollner's operations, the contract shall be adapted taking into account the principles of reasonableness and good faith. To the extent that this is not economically justifiable, Zollner shall have the right to withdraw from the contract. The same shall apply should necessary export licenses not be granted or be unusable. Should Zollner wish to exercise this right of withdrawal, Zollner shall notify the Customer of its decision immediately after realizing the consequences of the event, even if an extension of the delivery period had initially been agreed with the Customer.

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XI. Schlussbestimmungen

1. The legal relationships in connection with this Terms and Conditions of Sale and Delivery shall be governed by German substantive law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and other international private law conflict of laws rules. The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be at the registered office of Zollner. However, Zollner shall also be entitled to take legal action at the Customer's registered office. For Zollner subsidiaries based in Europe and Africa, the following regulation shall take precedence:
2. The delivery shall be governed exclusively by the law of the country and state in which the Zollner company that delivered the goods has its registered office. Any dispute, controversy or claim arising out of or in connection with the Agreement or the breach, termination or invalidity thereof shall be finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC). The arbitral tribunal shall be composed of three arbitrators. The seat of arbitration shall be at the registered office of the ordering Zollner company. The language to be used in the arbitration proceedings shall be English.
2. These Terms and Conditions of Sale and Delivery shall remain binding in its remaining parts even if individual provisions are legally invalid. This shall not apply if adherence to the contract would represent an unreasonable hardship for one of the parties.